

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)	
)	
Application by Qwest)	WC Docket No. 03-11
Communications International, Inc.)	
for Authorization to Provide In-)	
Region, InterLATA Services in New)	
Mexico, Oregon and South Dakota)	

February 3, 2003

COMMENTS OF THE PUBLIC UTILITY COMMISSION OF OREGON

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Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

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Appendix 1—August 19, 2002 Final Recommendation Report of the Public Utility Commission of Oregon in Docket UM 823 with Prior Workshop Reports Affixed. Incorporated by reference. Document filed by Qwest as part of its application in WC-Docket No. 03-11. See Attachment 5, Appendix C (File Name: OR_C_1_0040).

Appendix 2—Decision Denying AT&T Motion to Reopen and Supplement the Record, issued November 20, 2002. Incorporated by reference. Document filed by Qwest as part of its application in WC-Docket No. 03-11. See Attachment 5, Appendix P (File Name: OR_P_2_0140).

I. EXECUTIVE SUMMARY

The Public Utility PUCO of Oregon (PUCO) recommends that the Federal Communications Commission (Commission) grant the application of Qwest Communications International, Inc. (Qwest), for authority under section 271 of the Telecommunications Act of 1996 (the Act) to provide in-region interLATA services in the state of Oregon. The recommendation is the result of both the lengthy process of developing the factual record and the active participation of numerous parties. The record, which is notable for both its size and thoroughness, has been provided to the Commission by Qwest. A review of the record should satisfy the Commission that the PUCO has fully performed its investigative and review functions under the Act and based its findings, conclusions and affirmative recommendation with respect to Qwest's application upon the record developed.

During the course of its examination, the PUCO issued numerous Workshop Reports detailing its findings and conclusions on matters disputed by the parties with respect to particular aspects of Qwest's proposals and efforts to open up of the Qwest network to use by competitors and to assure compliance with the requirements of the Act and the furtherance of competition in the marketplace. The Workshop Reports are referred to throughout these Comments and are provided in Appendix 1.¹

¹ Appendix 1 is the August 19, 2002 Final Recommendation Report of the Public Utility Commission of Oregon in Docket UM 823. Prior Workshop Recommendation Reports are affixed. The OPUC incorporates Appendix 1 by reference since it is already on file with the Commission. Qwest filed this document as part of its application in WC Docket No. 03-11. See Attachment 5, Appendix C (File name: OR_C_1_0040).

II. PROCEDURAL HISTORY

The PUCO's Final Recommendation Report was issued on August 19, 2002. In order to be able to make its findings, the PUCO established procedures by Order No. 00-243, (May 5, 2000) and Order No. 00-385, (July 17, 2000), for the conduct of a series of “workshops” which, taken together, would cover all relevant matters.

The PUCO, in applying standards of proof, noted that the Commission had ruled that a Bell Operating Company (BOC), such as Qwest, has the burden to demonstrate that it has “fully implemented the competitive checklist and, particularly, that it is offering interconnection and access to network elements on a nondiscriminatory basis,” and that the standard of proof upon the BOC to meet that burden is by a preponderance of the evidence.² Once Qwest had made a *prima facie* case, it fell upon the intervenors to “produce evidence and arguments to show that the application does not satisfy the requirements of Section 271, or risk a ruling in the BOC’s favor.”³ With respect to functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the standard is that it must provide access to its competitors “in substantially the same time and manner as it provides to itself.” Where there is an analogous retail situation, “a BOC must provide access that is equal to (*i.e.*, substantially the same as) the level of access that the BOC provides itself, its customers or affiliates, in terms of quality, accuracy, and timeliness.” In those instances where a retail analogue is lacking, the BOC “must

² *Bell Atlantic New York Order*, (COMMISSION 99-404) at par. 48.

³ *Id.* at par. 49.

demonstrate that the access it provides to competing carriers would offer an efficient carrier a meaningful opportunity to compete.”⁴

In light of the fact that the 271 process was proceeding in neighboring states, the PUCO also gave some weight to the value of regional uniformity as an aid to competition. During the course of this proceeding, the PUCO was impressed with the need for cooperative effort on the part of regulators in the oversight of incumbent carriers and with the advantages of a consistent operating environment as an aid to encouraging a competitive marketplace. In the PUCO’s view, it is far harder for a new market entrant to negotiate and manage a region-wide agreement with an incumbent carrier so that it can provide services over a wide geographic area, if the contractual provisions vary in numerous minor details by jurisdiction. Similarly, it is more difficult to measure Qwest’s performance across the region, if different performance criteria must be met in each state. Thus, where a provision or policy, with which the PUCO had previously disagreed, was adopted by a substantial majority of the states in the Qwest region, the PUCO determined to maintain its previous provision or policy only where it found that such deviation from the majority view would substantially improve competition within Oregon. No such circumstance made its way into the Final Recommendation Report.

Extensive testimony was filed by numerous parties prior to each workshop and numerous witnesses were cross-examined on the record with respect to their proffered testimony. Substantial amounts of confidential data were exchanged at the request of the parties and issues in dispute were thoroughly briefed. The workshops also

⁴ *Id.* at par. 44 *et seq.*

became forums for clarification, negotiation and compromise on SGAT⁵ language to meet checklist item requirements and other aspects of Qwest's application. Rather than review the checklist items and other criteria in the sequence in which they occur in the Act, the issues were grouped according to practical considerations and by mutual agreement as follows:

Workshop 1:

Checklist Item 3: Access to Poles, Ducts, Conduits and Rights-of-Way

Checklist Item 7: 911, Directory Assistance and Operator Services

Checklist Item 8: White Pages Listings

Checklist Item 9: Numbering Administration

Checklist Item 10: Signaling and Call-Related Databases

Checklist Item 12: Local Dialing Parity

Checklist Item 13: Reciprocal Compensation

Workshop 2:

Checklist Item 1: Interconnection and Collocation

Checklist Item 11: Local Number Portability

Checklist Item 14: Resale

Workshop 3:

Checklist Item 2: Access to Unbundled Network Elements

Checklist Item 5: Access to Unbundled Local Transport

Checklist Item 6: Access to Unbundled Local Switching

⁵ Statement of Generally Available Terms. The access and interconnection offer agreement required by Section 271(c)(2)(A) and Section 252(f).

Workshop 4 (Parts 1 and 2):

Checklist Item 4: Access to Unbundled Loops

“Emerging Services”: Subloop Unbundling, Dark Fiber, Packet Switching
and Line Sharing

SGAT General Terms and Conditions

Public Interest Requirements of Section 271 (d)(3)(C)

Section 272 Separation and Safeguard Requirements

Section 271(d)(3)(C) Post-entry performance monitoring and enforcement
(Qwest Performance Assurance Plan or “QPAP”).

Workshop 5:

Checklist Item 2: Operations Support Systems (OSS)

Compliance with PUCO Recommendations in Workshops 1-4

Substantial Changes or Errors in Law or Fact

The review methodology evolved somewhat over the course of the workshops. At first, the process called for the issuance of Recommendation Reports from presiding Administrative Law Judge Allan J. Arlow (the ALJ) to the PUCO.⁶

Each of the first three ALJ Recommendation Reports was followed by a round of Comments by the parties, culminating in the issuance of a Recommendation Report by the PUCO. For the reasons mentioned in our Workshop 4, Part 1, Recommendation Report and Procedural Ruling, the PUCO eliminated the intermediate ALJ Recommendation Report phase and, beginning with the Workshop 4, Part 1,

⁶ Copies of ALJ and PUCO Recommendation Reports with respect to each of the issues addressed in the Workshops are contained in Appendix 1 to this Report and periodically referred to herein.

Recommendation Report, the PUCO began to directly issue Findings and Recommendation Reports based upon the record and the briefs submitted by the parties at the close of the workshop. The PUCO followed the same process with the Workshop 4, Part 2, Recommendation Report. By agreement of the parties, the final phase of the proceeding, “Workshop 5,” was conducted solely via the submission and review of written testimony and briefs.

As just noted, at the completion of each workshop, a Report was issued which detailed the PUCO’s resolution of contested issues. Quite often, as a result of negotiations or as a result of the issuance of the PUCO Reports, Qwest would amend sections of the SGAT to reflect those negotiated changes or rulings, and intervening parties would acknowledge on the record that terms or policies previously considered objectionable, had been remedied. Consequently, Workshop 5 became the forum to determine whether or not any matters, in which Qwest had not been given satisfactory rulings in earlier Reports, still remained unresolved to the satisfaction of all participants (“Compliance with PUCO Recommendations in Workshops 1-4”, *supra*).

The Workshop 5 or Final Recommendation Report adopted and included each of the recommendations of the prior Workshop Recommendation Reports, except as modified by the Final Recommendation Report itself. In addition to the adopted Workshop Recommendation Reports, the Final Recommendation Report contained several components leading up to the final recommendations. First, it provided findings and conclusions with respect to Qwest’s performance in the independent testing of the Operations Support Systems (OSS). The second additional aspect of the Final Recommendation Report (reviewed under the general heading of “SGAT Compliance”)

resolved matters examined in previous workshops where the PUCO failed to make affirmative recommendations with respect to Qwest's actions or representations for one or more of the following reasons:

- (1) Qwest had failed to meet its burden under the requirements of the Act;
- (2) A decision was deferred to later workshops where related issues were to be explored;
- (3) The PUCO was of the opinion that deferral of a decision would permit parties to reach a compromise position or clarify areas where potential misunderstandings might exist;
- (4) The PUCO had directed Qwest to make specific changes either to the SGAT or other relevant documents; and/or
- (5) The PUCO had made approval of certain provisions contingent upon satisfactory performance in related OSS testing.

The Final Recommendation Report also examined the following issues with respect to the SGAT and its attachments, including the QPAP:

- (1) Changes in federal or Oregon law since the time that the PUCO's recommendation was issued, having a material impact on any of our recommendations;
- (2) Newly-discovered facts having a material impact on any of the PUCO's recommendations;
- (3) PUCO error with respect to its interpretations of law having a material impact on any of its recommendations.

Finally, under the heading “Public Interest and Qwest Secret Contracts,” the PUCO’s Final Recommendation Report considered issues raised by intervenors with respect to Qwest’s behavior regarding certain interconnection agreements.

III. SECTION 271(c)(1)(A)—TRACK A REQUIREMENTS

In the Workshop 4, Part 2 Findings and Recommendation Report, the PUCO found that Qwest had satisfied all four of the Track A requirements:

- (1) Qwest had entered into multiple, binding agreements that have been approved under Section 252;
- (2) Qwest provided access and interconnection to unaffiliated competing providers of telephone exchange service;
- (3) Unaffiliated competitors were collectively providing telephone exchange service to both residential business subscribers; and
- (4) Competitors were providing telephone exchange service either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with resale of Qwest services.

Qwest provided, on a confidential basis, various telecommunications service statistics on nine unaffiliated competitors in Oregon.⁷ No intervening party challenged Qwest’s representation that it met the Track A criteria. Furthermore, the records of the PUCO confirmed Qwest’s assertion.⁸

⁷ *Id.*, pp.3-27.

⁸ *See*, “Local Telecommunications Competition Survey, Year 2001 Report,” issued December 11, 2001.

IV. SECTION 271(c)(2)(B)—COMPETITIVE CHECKLIST

A. Performance Data. Operational Support Systems (OSS) are the systems Qwest will utilize in communicating with, and providing services to, its competitors. Access to fair, efficient and nondiscriminatory operation of those systems is considered critical to the existence of competition in the local exchange market.⁹ Public utility commissions from all of the states within the fourteen-state Qwest region, except Arizona, worked cooperatively among themselves and, subsequently, with several independent business organizations they had retained, to conduct extensive testing of the operations support systems and undertake a thorough and impartial analysis of those results. The OSS performance was a key element in determining Qwest's satisfaction of the checklist criteria.

The tests included analyses of the following:

- (1) Pre-ordering, Ordering and Provisioning Functional Evaluation
- (2) Order Flow-Through Evaluation
- (3) Pre-ordering, Ordering and Provisioning Volume Performance Test
- (4) Maintenance and Repair (M&R) Functionality and End-to-End Trouble Report Processing Tests, including M&R Volume Test
- (5) Billing, Usage and Carrier Bill Functionality Test
- (6) Competitive Local Exchange Carrier (CLEC) Support Processes and Procedures Review
- (7) Change Management Test

⁹ The "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" required by checklist item 2 has been determined by the Commission to include OSS. *Local Competition First Report and Order*, 11 FCC Rcd at 15766 (¶523).

(8) Performance Measure Audit

The lead organization in this effort was KPMG Consulting (KPMG), which developed a Master Test Plan, and, in conjunction with Qwest, CLECs, representatives of state public utility commissions and several other organizations, conducted the “military style” test and analyzed the results.¹⁰ On May 28, 2002, KPMG issued its Final Report (KPMG Report), whose results we adopted in reaching our affirmative conclusions with respect to Qwest’s performance.¹¹

B. Checklist Item No. 1—Interconnection and Collocation.

Workshop 2 dealt extensively with issues arising out of Checklist Item No. 1 and the ALJ Workshop 2 Findings and Recommendation Report, pages 6-16 and the Workshop 2 Findings and Recommendation Report of the PUCO, pages 5-20, addressed matters disputed by Qwest and the intervening parties. Qwest was required to make numerous changes to the SGAT and its Qwest Performance Assurance Plan (QPAP), but all matters were resolved satisfactorily by the time the Final Recommendation Report was issued.

C. Checklist Item No. 2—Unbundled Network Elements (UNEs).

Issues raised with respect to access to UNEs were examined extensively in Workshop 3 and the proposed and recommended resolutions of those issues are set forth in the Workshop 3 ALJ Recommendation Report, pages 5-26 and the Workshop 3 Recommendation Report of the PUCO, pages 2-14. Access to OSS and the Bona Fide

¹⁰ Essentially, Qwest’s performance was measured against the Performance Indicator Definitions (PIDs). When tabulated results within the test reports showed that Qwest had failed one or more of the PIDs, Qwest would make modifications to its systems operations and retake the tests. This process continued until Qwest had achieved satisfactory performance with respect to the PID in question. The KPMG Report is already on file with the Federal Communications Commission and therefore no purpose is served to describe it in great detail here.

Request (BFR) process were explored in Workshop 4, Part 2 and the PUCO's Recommendations are set forth on page 29-34 of that Report. All changes to the SGAT and QPAP required for our approval were adopted by Qwest. The parties also completed a redesign of the change management process to the satisfaction of the PUCO. The PUCO rejected a request to enlarge the scope of the proceeding to examine the costs and prices of UNEs in the instant proceeding, reserving those questions for another docket where an investigation of pricing issues was already underway.

D. Checklist Item No. 3—Poles, Ducts, Conduit and Rights-of-Way.

Workshop 1 included extensive testimony and cross-examination of witnesses with respect to Checklist Item No. 3. The Workshop 1 ALJ Report, pages 4-10 and the Workshop 1 PUCO Recommendation Report, pages 6-11 addressed all contested issues. By the time the Final Recommendation Report was issued, Qwest had made all necessary modifications to its SGAT and representations to the PUCO.

E. Checklist Item No. 4—Unbundled Local Loops. Issues related to Checklist Item 4 were examined in Workshop 4, Part 1 and covered unbundled loops, generally, line splitting and network interface devices. The PUCO issued recommendations in its Workshop 4 Report in each of these areas at pages 6-30. Related issues in emerging services—subloop unbundling, dark fiber, packet switching and line sharing--were also covered in Workshop 4, part 1. The PUCO's recommendations are contained in the same report at pages 31-47. By the time the PUCO's Final

¹¹ "There is little in the overall OSS process that is Oregon-specific and nothing which rises to such magnitude as to justify findings substantially different from those made elsewhere in the Qwest region....We accept their findings." Final Recommendation Report, p. 8.

Recommendation Report was issued, Qwest was found to be in compliance with the requirements of this checklist item.

F. Checklist Item No. 5—Unbundled Local Transport. The issues disputed in this checklist item related to the differences between dedicated unbundled interoffice transport (UDIT) and extended unbundled dedicated interoffice transport, (EUDIT) and Qwest’s obligation to add electronics to the CLEC end of an EUDIT. The Workshop 3 Report of the PUCO at pages 14-16, adopted the ALJ’s recommendation that Qwest’s policies be found to comply with the requirements of the Act.

G. Checklist Item 6—Unbundled Local Switching. The only disputed issue that remained under this checklist item was the methodology for calculating the number of lines for the purpose of the exception to providing unbundled switching at TELRIC rates in zone 1 of the top fifty MSAs. In the Workshop 3 Report, pages 17-18, the PUCO adopted the ALJ’s interpretation of the Commission’s *UNE Remand Order*,[¶] 292, *et seq.*, and found Qwest’s position to be in compliance with the Act. The PUCO did, however, suggest that “clarification of the FCC’s intention on this issue should be sought via a federal petition rather than as part of this proceeding.”

H. Checklist Item 7—911, Directory Assistance and Operator Services. No objections to the ALJ’s findings on this issue were presented to the PUCO for review and, in its Workshop 1 Report, page 11, the PUCO certified Qwest’s compliance contingent upon satisfactory OSS performance.

I. Checklist Item 8—White Pages Listings. None of the intervenors raised objection to Qwest’s compliance with this item and it was closed by stipulation at

Workshop 1. In the Workshop 1 Report, page 13, the PUCO certified compliance contingent upon satisfactory OSS performance.

J. Checklist Item 9—Numbering Administration. Although some questions were raised regarding Qwest’s local routing number policy and number reassignment, intervening parties agreed to explore those issues under other checklist items in later workshops. Qwest’s compliance with this item was stipulated and the PUCO adopted the ALJ’s recommendation in its Workshop 1 Report at page 13 and found Qwest to be in compliance contingent upon satisfactory OSS performance.

K. Checklist Item 10—Signaling and Call-Related Databases. Initially questions were raised regarding direct connections for signaling, SGAT language changes and line information database accuracy. All of these questions were resolved either before or at the first Workshop. However, with respect to Qwest’s provision of inter-network calling name database, the ALJ recommended and the PUCO adopted a position that Qwest should only be required to provide the access to the database on a “per query” basis. (Workshop 1 Report, pages 13-14). The PUCO found Qwest to be in compliance on this checklist item, contingent upon satisfactory OSS performance.

L. Checklist Item 11—Local Number Portability. Issues of cutovers, porting and loop provisioning coordination were disputed under this checklist item. Difference were resolved through Qwest’s modification of SGAT language and, with those changes, the PUCO found Qwest to be in compliance with the requirements of the Act with respect to Checklist Item 11. (Workshop 2 Report, pages 20-22).

M. Checklist Item 12—Local Dialing Parity. None of the intervenors raised an objection to Qwest’s assertion of compliance with this checklist item and it was

closed by stipulation at Workshop 1. The PUCO found Qwest to have complied with the requirements of Section 271 of the Act with respect to this checklist item. (Workshop 1 Report, page 14.)

N. Checklist Item 13—Reciprocal Compensation. The interpretation of 47 CFR 51.711(a) and Qwest’s compliance with it were the subject of considerable disagreement during Workshop 1 and numerous findings and recommendations were issued (Workshop 1 Report, pages 15-23). The issue of compensation for internet-bound traffic was excluded from the proceeding, due to its consideration by the Commission and the courts in a larger context than Section 271 compliance (*Id.*, page. 24). Qwest revised its SGAT to comply with the changes recommended by the PUCO and was found, by the time the Final Recommendation Report was adopted, to be in compliance with the requirements of this checklist item.

O. Checklist Item 14—Resale. This issue was covered in Workshop 2. The parties were at an impasse with respect to the amount and methods of indemnification Qwest would owe its resellers in the event of service outages, impairments or other quality failures. Qwest was required to modify the language in its SGAT in order to be found by the PUCO to be in compliance with this checklist item and did so prior to the issuance of the final report. (Workshop 2 Report, pages 22-25).

VI. THE PUBLIC INTEREST

The PUCO addressed Section 271(d)(3)(c) issues in Workshop 4, part 2, (pages 39-47), in the Final Recommendation Report (pages 18-19) and in its Decision

denying a Motion on Reconsideration (Appendix 2, pages 1-3)¹². While the PUCO did find that Qwest's past behavior was less than the ideal, it stated "we do not believe that the totality of the earlier behavior is sufficient to warrant a finding of special circumstances that cannot be overcome either by the resolution of disputed matters in prior workshops or an effective Performance Assurance Program."¹³

To assure Qwest's compliance with the requirements of the Act after Section 271 authority is granted, in Workshop 4, part 2, the PUCO considered numerous issues raised by intervening parties with respect to provisions in the QPAP and made findings and recommendations accordingly.¹⁴ With the recommended modifications made by Qwest to a significant number of QPAP provisions, approval of the Qwest application was found to be in the public interest.

V. SECTION 272

Section 272 relates to the structural and non-structural safeguards which the Act requires a BOC to put in place to assure nondiscriminatory behavior by a BOC vis-à-vis the BOC's affiliate and an unaffiliated competitor. The PUCO considered Section 272 issues in Workshop 4, part 2, (Workshop 4, part 2 Report, pages 47-58) and noted that, while there had been problems in the past, "Qwest has, however, taken significant steps in the right direction by correcting the discrepancies and implementing the controls and control enhancements.... These changes cannot undo the past but serve to allow us to find, with reasonable assurance, that Qwest will be able to comply with its

¹² Appendix 2 is the PUCO's decision denying AT&T's Motion to Reopen and Supplement Record, issued November 20, 2002. The OPUC incorporates Appendix 2 by reference since it is already on file with the Commission. Qwest filed this document as part of its application in WC Docket No. 03-11. See Attachment 5, Appendix P (File name: OR_P_2_0140).

¹³ Final Report, page 19, citing Workshop 4, Part 2 Report, p. 47.

Section 272 obligations...”¹⁵ The PUCO found in its Final Recommendation Report that recommended changes in procedures and SGAT language had been sufficient to make a positive recommendation to the Commission with respect to Qwest’s satisfaction of the requirements of Section 272 of the Act.

VII. CONCLUSION

For the reasons set forth above, and pursuant to its authority under section 271 (d)(2)(B) of the Act, the Public Utility Commission of Oregon recommends that the Federal Communications Commission approve Qwest’s application to offer in-region interLATA service in the state of Oregon.

DATED at Salem, Oregon and effective this 3rd day of February, 2003.

/s/ ROY HEMMINGWAY, Chairman

/s/ LEE BEYER, Commissioner

/s/ JOAN H. SMITH, Commissioner

¹⁴ These issues were analyzed at length in the Workshop 4, part 2 Report, pages 58-93.

¹⁵ Workshop 4, part 2 Report, p. 52.